

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 10, 2004

IN RE:

**PETITION OF CINERGY
COMMUNICATIONS COMPANY FOR
ARBITRATION OF INTERCONNECTION
AGREEMENT WITH BELL SOUTH
TELECOMMUNICATIONS, INC.
PURSUANT TO THE
TELECOMMUNICATIONS ACT OF 1996**

**DOCKET NO.
01-00987**

ORDER DIRECTING FILING OF REVISED JOINT ISSUES MATRIX

This matter is before the Pre-Arbitration Officer in this docket for the purpose of resolving preliminary matters and establishing a procedural schedule to completion. Through this Order the Pre-Arbitration Officer is requiring the parties to file either a revised joint issues matrix or support for the parties agreement to resolve Issue 12 separately from the other issues in this arbitration.

Background

On November 9, 2001, Cinergy Communications Company (Cinergy) filed the *Petition for Interconnection by Cinergy Communications Company Against BellSouth Telecommunications, Inc (Petition)* seeking arbitration by the Tennessee Regulatory Authority (TRA or Authority) of unresolved issues between Cinergy and BellSouth Telecommunications, Inc. (BellSouth) in the renegotiation of the existing interconnection agreement between the parties. On March 27, 2002, the parties filed a joint issues matrix which contained five issues as follows:

Issue 10 -- Should BellSouth be required to provide Cinergy Communications nondiscriminatory access to unbundled packet switching in areas where BellSouth has deployed remote terminals in its network?

Issue 11 -- Should BellSouth be required to offer unbundled packet switching as a UNE?

Issue 12 -- Should BellSouth be required to offer Line Splitting -- access to the High Frequency Portion of the Loop (HFPL) -- when Cinergy Communications purchases UNE-P loops from BellSouth to provide local service?

Issue 13 -- Should BellSouth be required to include packet switching functionality as part of the UNE platform, (referred to as UNE-D)?

Issue 14 -- Should BellSouth be prohibited from requiring credit card billing of its Advanced Service customers when Cinergy Communications provides the underlying voice service to the same end user?¹

On September 9, 2002, Cinergy filed a letter stating that the parties had agreed that a hearing on the *Petition* should be postponed pending the outcome of a generic proceeding regarding issues relating to BellSouth's provision of DSL service over a UNE-P loop. This docket remained inactive based on that agreement until May 4, 2004, when Cinergy requested that the docket be reactivated and filed its *Motion for Summary Judgment (Cinergy's Motion)* on the issue of BellSouth providing DSL service over a UNE-P loop.

On May 6, 2004, BellSouth filed a letter requesting the Authority establish a briefing schedule regarding *Cinergy's Motion*. BellSouth filed its *Response of BellSouth Telecommunications, Inc to Cinergy's Motion for Summary Judgment (BellSouth's Response)* on May 27, 2004. On June 3, 2004, Cinergy filed a request to file a reply to *BellSouth's Response* by June 18, 2004. On June 17, 2004, Cinergy filed a request to extend the deadline for filing its reply to *BellSouth's Response* to June 23, 2004.

The Pre-Arbitration Officer issued the *Order Granting Cinergy's Request to Reply to the*

¹See Letter from Guy M Hicks, Counsel, BellSouth Telecommunications, Inc. to David Waddell, Executive Secretary, Tennessee Regulatory Authority (March 27, 2002) (issues matrix attached)

Response of BellSouth Telecommunications, Inc to Cinergy's Motion for Summary Judgment on June 21, 2004 and on June 23, 2004, the *Reply of Cinergy Communications Company* was filed. On June 30, 2004, Counsel for BellSouth filed a letter advising that the parties had not yet agreed on proposed dates for oral argument.

On August 2, 2004, the Pre-Arbitration Officer sent a letter to Counsel for BellSouth, with a copy to Counsel for Cinergy, inquiring as to the status of this matter and whether the parties had reached an agreement regarding proposed dates for oral argument. On August 20, 2004, Counsel for BellSouth filed a letter stating that the parties had agreed to either September 23, September 27, or October 11, 2004 as proposed dates for oral argument.

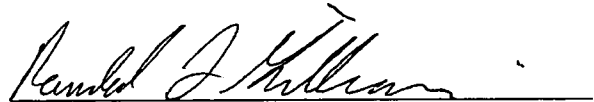
On September 30, 2004 the Pre-Arbitration Officer contacted the parties noting that the parties had apparently agreed that Issue 12 should be resolved separately from the other issues in this arbitration, and requesting that the parties provide an explanation for proceeding with a resolution of Issue 12 separately from the other issues in dispute.

Finding

Cinergy has a pending motion for summary judgment regarding Issue 12 to which BellSouth has responded with substantive arguments. Nevertheless, neither party has provided a reason for addressing Cinergy's motion for summary judgment on Issue 12 and thereby departing from the standard practice of resolving all open issues in arbitration at the same time. The Pre-Arbitration Officer finds that, given the apparent agreement of the parties that this docket has narrowed to a single issue, either a revised joint issues matrix is in order, or the parties should file an explanation demonstrating why Issue 12 should be resolved prior to taking up the other issues that remain open in this arbitration.

IT IS THEREFORE ORDERED THAT:

The Parties shall, on or before **2:00 p.m.** on **November 17, 2004**, jointly file a revised joint issues matrix identifying all issues that remain open in this docket or, in the alternative, file an explanation in support of proceeding with a resolution of Issue 12 separate from and prior to addressing the other issues that remain open in this arbitration.

A handwritten signature in cursive script, appearing to read "Randal L. Gilliam", is written over a horizontal line.

Randal L. Gilliam
as Pre-Arbitration Officer